

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VIRIGL GRAVES, VIRGIL GRAVES,  
SR., BEVERLY WARD, and COREY  
GRAVES,

Plaintiffs,

v.

CITY OF STOCKTON, STOCKTON  
POLICE DEPARTMENT, CHIEF MARK  
W. HERDER, OFFICER JENNEIAHN  
(#1471), OFFICER FRY (#1480),  
OFFICER JOHNSON (#4k49),  
OFFICER GRAVIETTE, SENIOR CADET  
WONG, SGT. MURRELL, SGT.  
RESTUCIA, OFFICER RIDENOUR  
(#1433), DETECTIVE C.  
VILLANUEVA (#1120), DETECTIVE  
T. KAMIGAKI (#4188), OFFICER  
THRUSH (#1114), and DOES 4 to  
20,

Defendants.

CIV-S-04-0430 DFL KJM

MEMORANDUM OF OPINION  
AND ORDER

Plaintiffs Virgil Graves, Jr. ("Graves"), Virgil Graves, Sr.  
("Graves, Sr."), and Corey Graves ("Corey") bring this excessive  
force action against the City of Stockton ("City"), the Stockton  
Police Department ("SPD"), and twelve individual officers under

1 42 U.S.C. § 1983 and several state statutes. Defendants move for  
2 summary judgment on all of plaintiffs' claims. For the reasons  
3 stated below, the motion is DENIED in part and GRANTED in part.

4 I.

5 This case turns on whether the defendant officers used  
6 excessive force on two different occasions. The parties agree  
7 that a police dog bit Graves on the two occasions. However, the  
8 parties present conflicting accounts of the facts and  
9 circumstances surrounding the incidents. Because defendants  
10 filed this motion for summary judgment, the court views the facts  
11 and circumstances surrounding each incident in the light most  
12 favorable to plaintiffs. Anderson v. Liberty Lobby, Inc., 477  
13 U.S. 242, 255, 106 S.Ct. 2505 (1986).

14 A. March 22, 2002

15 The first incident occurred on March 22, 2002. The court  
16 accepts the following facts as true for purposes of this motion.  
17 Officers Jenneiahn and Fry responded to a disturbance involving  
18 Graves and another man. (Pls.' Resp. to SUF ¶ 2.) When the  
19 officers arrived on the scene, Graves and the other man were  
20 yelling at each other. (Id. ¶ 4.) The officers separated the  
21 two men. (Id.) Jenneiahn walked with Graves towards a police  
22 car. (Graves Dep. 37:4, Oct. 25, 2005; Jenneiahn Dep. 20:11, May  
23 18, 2005.) Jenneiahn informed Graves numerous times that he was  
24 not under arrest. (Pls.' Resp. to SUF ¶ 7.) Graves voluntarily  
25 submitted to a pat-down by Jenneiahn. (Id. ¶ 8.) The pat-down  
26 did not uncover a weapon. (Id.) Officer Jenneiahn instructed

1 Graves to get into the police car. (Id. ¶ 9.) Graves complied  
2 with Jenneiahn's request and sat in the backseat of the police  
3 car. (Graves Dep. 38:20-39:2.) Johnson arrived on the scene  
4 with a police dog. (Pls.' Resp. to Defs.' SUF ¶ 11.) While  
5 Graves was seated in the car, Johnson's police dog attacked him  
6 without warning. (Graves Dep. 40:15-16; 42:1-12.) Moments  
7 later, Jenneiahn began striking Graves with a baton and taunting  
8 him. (Id. 40:17-19; 42:24-43:3.) Graves remained in the vehicle  
9 for approximately one minute before an officer pulled him out of  
10 the car by his hair. (Id. 41:9-13.) Using its teeth, the dog  
11 held Graves' arm throughout the entire incident, and did not  
12 release its grip until after the police had Graves in handcuffs.  
13 (Id. 40:21-41:6.) Graves' bite wounds were treated at the County  
14 Hospital. (Pls.' Resp. to Defs.' SUF ¶ 31.)

15 B. April 10, 2002

16 The second incident occurred on April 10, 2002. The court  
17 accepts the following facts as true for purposes of this motion.  
18 Graves escaped from police custody on April 7, 2002. (Pls.'  
19 Resp. to Defs.' SUF ¶ 35.) On April 10, 2002, the police staked  
20 out Graves' apartment because he was wanted for robbery and  
21 escape. (Id. ¶ 36, 38.) At some point, Graves got into a car  
22 with his mother, Corey, and Graves, Sr. and drove away from the  
23 apartment building. (Id. ¶¶ 40-41.) Graves and his family  
24 pulled into a gas station and Graves exited the vehicle. (Id. ¶  
25 42-43.) Two plainclothes police officers arrived at the gas  
26 station in an unmarked car, got out of the car, drew their

1 weapons, and ordered Graves to "freeze." (Graves Dep. 59:6-15.)  
2 Several other officers arrived on the scene and also drew their  
3 weapons. (Id. 59:15-18.) The officers instructed Graves to get  
4 on the ground. (Id. 59:18-19.) Graves raised his hands in the  
5 air and lowered himself to his knees. (Id. 61:13-15.) An  
6 officer approached Graves and kneed him. (Id. 61:16-18.) Graves  
7 grabbed a nearby steel pole that was concreted into the ground.  
8 (Id. 62:1-2.) After five other officers approached Graves and  
9 began striking him, Graves let go of the pole. (Id. 62:10-14,  
10 63:22-24.) The officers took control of Graves' arms, began  
11 choking him, and sprayed mace on his face. (Id. 63:25-64:10.)  
12 The officers handcuffed Graves, put leg restraints on him, and  
13 connected the leg restraints to the handcuffs in a "hogtie".  
14 (Id. 65:7-17.) At that point, while he was hogtied and on the  
15 ground, the police dog attacked Graves without warning. (Id.  
16 65:7-9; 65:15-18; 64:24-65:3.) The dog bit him several times on  
17 the shoulder and ripped off a chunk of his left ear. (Id.) The  
18 officers then threw Graves into the back of a police car and took  
19 him to jail. (Id. 65:4-6.) After photographing him at the jail,  
20 the police took Graves to the County Hospital for treatment.  
21 (Id.) Graves, Sr. and Corey witnessed the events at the gas  
22 station.

## 23 II.

24 Plaintiffs originally asserted a host of claims against  
25 fourteen defendants. After defendants moved for summary  
26 judgment, the parties stipulated to dismiss all claims except the

1 following: (1) Graves' § 1983 claim for excessive force in  
2 violation of the Fourth Amendment against the City, Jenneiahn,  
3 Johnson, Villanueva, Kamigaki, and Thrush; (2) Graves' claims for  
4 battery and negligence against the City, Jenneiahn, Johnson,  
5 Villanueva, Kamigaki, and Thrush; and (3) Graves, Sr. and Corey's  
6 intentional infliction of emotional distress and negligence  
7 claims against the City, Villanueva, Kamigaki, and Thrush.  
8 Defendants move for summary judgment on all claims.

9 A. Excessive Force

10 The officers argue that they are entitled to qualified  
11 immunity from Graves' excessive force claim under § 1983.  
12 Qualified immunity protects "government officials performing  
13 discretionary functions from liability for civil damages insofar  
14 as their conduct does not violate clearly established statutory  
15 or constitutional rights of which a reasonable person would have  
16 known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727  
17 (1982). Courts follow a two-step test when determining whether  
18 an official is entitled to qualified immunity. First, the court  
19 must determine whether "[t]aken in the light most favorable to  
20 the party asserting the injury . . . the facts alleged show  
21 [that] the officer's conduct violated a constitutional right."  
22 Saucier v. Katz, 533 U.S. 194, 201, 121 S.Ct. 2151 (2001).  
23 Second, the law must clearly establish "that the officer's  
24 conduct was unlawful in the circumstances of the case." Id. at  
25 207. According to plaintiff Graves' version of the facts, on  
26 both occasions the defendant officers used a dog to bite Graves

1 when there was no reason to use any additional force. If these  
2 are the facts, then the officers used excessive force and cannot  
3 claim that there was any uncertainty as to their right to use the  
4 force employed.

5 B. Liability of the City under § 1983

6 Plaintiff Graves also sues the City under § 1983. "[A]  
7 municipality cannot be held liable under 1983 on a respondeat  
8 superior theory." Monell v. Dep't of Social Servs., 436 U.S.  
9 658, 691, 98 S.Ct. 2018 (1978). Thus, the City is not liable  
10 under § 1983 for the negligence of its employees. See Thompson  
11 v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989).

12 Instead, plaintiff Graves must show that a City policy, practice,  
13 or custom caused the violation of his rights. Monell, 436 at  
14 690; see also Kentucky v. Graham, 473 U.S. 159, 166, 105 S.Ct.  
15 3099 (1985) (finding that a city is liable if it is the "moving  
16 force" behind a civil rights violation).

17 Plaintiff Graves asserts two bases for holding the City  
18 liable: (1) "the officers used force in accordance with and  
19 pursuant to department policy"; and (2) the City failed "to train  
20 or supervise" the officers.<sup>1</sup> However, plaintiff Graves fails to  
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22 <sup>1</sup> Plaintiffs also submit a declaration from an expert  
23 witness who states that the SPD's lack of a canine policy caused  
24 Graves' injuries. (Bogardus Decl. ¶ 19.) He also asserts that  
25 the Department had a policy permitting excessive force because it  
26 failed to criticize either dog handler for his conduct.  
However, at the hearing plaintiffs conceded that the SPD had a  
canine use policy when the incidents occurred. Therefore, this  
argument fails. Furthermore, there is no evidence that the  
Department ratified the conduct of the dog handlers having found  
the facts to be as plaintiffs assert.

1 provide sufficient evidence to support either basis for municipal  
2 liability.

3 1. Use of Force in Accordance With Policy

4 Defendants have the burden of showing that plaintiff Graves  
5 has failed to produce evidence from which a reasonable jury could  
6 find that a City policy, custom, or practice caused the violation  
7 of his rights. Celotex v. Catrett, 477 U.S. 317, 323, 106 S.Ct.  
8 2548 (1986). To satisfy this burden, defendants provide the SPD  
9 canine use policy and the SPD use of force policy.

10 The SPD canine use policy is five pages long and sets forth  
11 guidelines for the "[u]se of police canines." (Green Decl. Ex.  
12 11.) The policy states: "Canine use should be tempered with an  
13 awareness of the public's sensitivity and occasional outright  
14 fear of dogs." (Id.) According to the policy, there are six  
15 intended uses of SPD canines: (1) "Officer personal safety"; (2)  
16 "Apprehension of fleeing suspects"; (3) "Search"; (4) "Approved  
17 crowd control"; (5) "Mutual aid requests"; and (6) "Demonstration  
18 requests." (Id.) The policy provides that a police dog can be  
19 used to assist an officer who is being assaulted; however, a dog  
20 should only be used "when it appears obvious other less  
21 aggressive measures of defense would not be effective, (i.e.  
22 negotiation, physical restraint)." (Id.)

23 The SPD use of force policy is eleven pages long. It  
24 states: "Department members may use reasonable force to effect an  
25 arrest, prevent an escape, or overcome resistance. The type and  
26 degree of force used will be reasonable, based upon the facts of

1 the situation. Only that force necessary and reasonable for the  
2 crime involved will be used.” (Id.) The use of a police dog is  
3 considered force under the policy and is prohibited “against non-  
4 combative persons” except to conduct a search. (Id.)

5 In response, the only evidence plaintiff Graves provides to  
6 support his claim is the deposition testimony of Johnson and  
7 Thrush, the dog handlers involved in the two incidents. (Opp’n  
8 at 23-26.) At his deposition, Johnson stated that he believed  
9 “department rules” permitted him to release a dog on a man who  
10 was striking another officer in the chest in an effort to escape.  
11 (Johnson Dep. 46:8-25.) Officer Thrush stated that “our canine  
12 sergeant” declared that the April 10, 2002 bite was “in policy”  
13 because Graves was wanted for felony robbery, he was actively  
14 resisting arrest, and was assaulting police officers. (Thrush  
15 Dep. 72:7-11.)

16 There are a number of problems with plaintiff Graves’  
17 submission. First, these barebones comments do not establish  
18 what department policy was at the time of the incidents. Johnson  
19 merely states that he thinks he acted in conformity with policy.  
20 There is no showing on what he based his opinion. Thrush’s  
21 testimony is equally unhelpful. He gives a second hand version  
22 of what another officer concluded based on circumstances that are  
23 not specified in any detail. Plaintiff Graves apparently failed  
24 to depose those persons in the department who are responsible for  
25 formulation of the department’s policies on the use of force.  
26 On the basis of this scanty proof no reasonable juror could



1 conclude that the department had a policy that was different than  
2 its announced written policy. Second, it is not at all clear  
3 from these brief comments that the policy as described would  
4 permit an unreasonable use of force. In both depositions the  
5 officers describe situations in which an officer is under direct  
6 assault. Finally, there is no evidence of recurring instances of  
7 excessive force by dog handlers such that a jury could conclude  
8 that the department had a policy or custom other than that  
9 expressed in its written policy. See Meehan v. County of Los  
10 Angeles, 856 F.2d 102, 107 (9th Cir. 1988) (holding that evidence  
11 of illegal conduct during two police raids was not enough to show  
12 a practice or custom); Nadell v. Las Vegas Metro. Police Dep't,  
13 268 F.3d 924, 929 (9th Cir. 2000) (holding that proof of single  
14 incident of unconstitutional activity does not show a custom or  
15 practice).

16 In sum, on the evidence provided, plaintiff Graves fails to  
17 show that the defendants were acting in accordance with an  
18 unconstitutional policy.

19 2. Inadequate Training

20 To succeed on a § 1983 claim against the City under a theory  
21 of inadequate training, plaintiff Graves must show that: (1) the  
22 City failed to provide adequate training; (2) the City exhibited  
23 deliberate indifference to adequately training the officers; and  
24 (3) the inadequate training caused the deprivation of Graves'  
25 rights. However, plaintiff Graves has provided no evidence to  
26 show that the City failed to provide adequate training or that

1 the City was deliberately indifferent to the training of its  
2 officers. In fact, after naming this theory as one of two bases  
3 for City liability, plaintiff Graves fails to discuss it at all,  
4 perhaps conceding the point. Without introducing evidence of the  
5 training programs offered by the City or the training that the  
6 individual defendants received, plaintiff Graves cannot succeed  
7 at trial on the claim that he was injured because the City failed  
8 to adequately train its officers.

9 Because plaintiff Graves have failed to produce evidence to  
10 allow a reasonable jury to find the City liable for his injuries,  
11 defendants' motion is GRANTED on the § 1983 claim against the  
12 City.

13 C. Liability Under the California Tort Claims Act

14 Plaintiffs assert state law claims for negligence,  
15 intentional infliction of emotional distress, and battery against  
16 all defendants. Defendants argue that they are immune from these  
17 claims under Cal. Gov't Code §§ 820.2, 820.4, and 821.6.  
18 However, "California denies immunity to police officers who use  
19 excessive force in arresting a suspect." Robinson v. Solano  
20 County, 278 F.3d 1007, 1016 (9th Cir. 2002); see also Scruggs v.  
21 Haynes, 252 Cal.App.2d 256, 264 (1967) ("The California cases  
22 have consistently held that a peace officer making an arrest is  
23 liable to the person arrested for using unreasonable force.").  
24 Therefore, none of the immunities claimed by the individual  
25 defendants applies here. The individual defendants' motions for  
26 summary judgment based on statutory immunities are DENIED.

1 The California Tort Claims Act provides that public entities  
2 in California are liable for injuries caused by their employees  
3 if: (1) the employees were acting within the scope of their  
4 employment; and (2) the employee could be held personally liable  
5 for the action. Cal. Gov't Code § 815.2(a). From the facts as  
6 presented by Graves, a jury could conclude that the officers  
7 caused his injuries during the course of their employment. As  
8 discussed above, those individual defendants are not immune from  
9 suit if the force used against Graves was unreasonable.  
10 Therefore, the City, as employer of the individual defendants,  
11 can be held liable for plaintiffs' damages under § 815.2(a). The  
12 City's motion for summary judgment based on statutory immunity is  
13 DENIED.

14 D. Intentional Infliction of Emotional Distress

15 Graves, Sr. and Corey assert claims for intentional  
16 infliction of emotional distress. The relevant facts for these  
17 claims, when viewed in the light most favorable to plaintiffs,  
18 are as follows. Graves, Sr. and Corey watched a dog attack  
19 Graves, their son and brother, respectively, at the direction of  
20 a police officer, while Graves was lying on the ground in a  
21 hogtie, and while they were detained in separate police cars,  
22 unable to assist him.

23 The elements of an intentional infliction of emotional  
24 distress ("IIED") claim in California are: (1) "[e]xtreme and  
25 outrageous conduct by the defendant with the intention of  
26 causing, or reckless disregard of the potential for causing,

1 emotional distress; (2) the plaintiff's suffering severe or  
2 extreme emotional distress; and (3) actual and proximate  
3 causation of the emotional distress by the defendant's outrageous  
4 conduct." KOVR-TV, Inc. v. Super. Ct., 31 Cal.App.4th 1023, 1028  
5 (1995). Defendants argue that plaintiffs cannot prove the first  
6 two of these elements.

7 1. Extreme and Outrageous Conduct

8 "Conduct to be outrageous must be so extreme as to exceed  
9 all bounds of that usually tolerated in a civilized community."  
10 Id. (citation omitted). "Generally, conduct will be found to be  
11 actionable where the recitation of the facts to an average member  
12 of the community would arouse his resentment against the actor,  
13 and lead him to exclaim, 'Outrageous!'" Id. (citation and  
14 internal quotation omitted). The court finds that, when viewing  
15 the facts in the light most favorable to Graves, a jury could  
16 find that the police engaged in outrageous behavior when they  
17 directed a police dog to bite a hogtied man so viciously that  
18 part of his ear was ripped off.

19 In addition, the court finds that a reasonable jury could  
20 conclude that the officers exercised reckless disregard towards  
21 Graves, Sr. and Corey when they ordered the dog to attack Graves  
22 while he was hogtied and in their plain view. Because plaintiffs  
23 need not prove that defendants intended to injure Graves, Sr. and  
24 Corey, just that they "devoted little or no thought to [the]  
25 probable consequences of [their] conduct," the court finds that  
26 defendants engaged in the requisite conduct to support an IIED

1 claim. Id.

2 2. Emotional Distress

3 Emotional distress for which a plaintiff can recover  
4 "includes fright, nervousness, grief, anxiety, worry,  
5 mortification, shock, humiliation and indignity, in addition to  
6 physical pain." Thing v. La Chusa, 48 Cal.3d 644, 648-49 (1989).  
7 It may include "all highly unpleasant mental reactions, such as  
8 fright, horror, grief, shame, humiliation, embarrassment, anger,  
9 chagrin, disappointment, worry and nausea." Young v. Bank of  
10 America, 141 Cal.App.3d 108, 114 (1983). "Severe emotional  
11 distress means . . . emotional distress of such substantial  
12 quantity or enduring quality that no reasonable [person] in a  
13 civilized society should be expected to endure it." Girard v.  
14 Ball, 125 Cal.App.3d 772, 787-88 (1981) (internal citation  
15 omitted). "It is for the court to determine whether on the  
16 evidence severe emotional distress can be found; it is for the  
17 jury to determine whether, on the evidence, it has in fact  
18 existed." Fletcher v. W. Nat'l Life Ins. Co., 10 Cal.App.3d 376,  
19 397 (1970).

20 Graves, Sr. avers that he gets visions of his son's mauling  
21 whenever he returns to the gas station, and that he has woken up  
22 at night "frightened and frustrated by being handcuffed in the  
23 police car and forced to watch the cops mutilate my boy with a  
24 dog and not being able to do anything about it." (Graves, Sr.  
25 Dep. ¶ 6.) Corey avers that she could not sleep for "quite a  
26 while, thinking about how the cops treated my brother. In fact,

1 I cried about it for several days.” (Corey Dep. at 2.)

2 The California case law reveals that a reasonable jury could  
3 conclude that these facts constitute severe emotional distress.  
4 In Young, a woman sued Bank of America for IIED because the bank  
5 instituted a collection action against her for unpaid credit  
6 charges even though she had informed the bank that her credit  
7 card had been stolen. 141 Cal.App.3d at 115. She claimed that  
8 her negative credit rating and the rejection of a credit card  
9 application caused her embarrassment, shame, and feelings of  
10 helplessness and frustration. Id. “She complained of severe  
11 stress, nervousness, headaches, and insomnia.” Id. The  
12 appellate court upheld the trial court’s finding that the  
13 plaintiff had alleged facts from which a reasonable jury could  
14 conclude that she had suffered severe emotional distress. Id.

15 Similarly, in Golden v. Dungan, 20 Cal.App.3d 295, 311  
16 (1971), the plaintiff made an IIED claim against a process server  
17 who knocked on his door at 11:00 in the evening. The plaintiff  
18 alleged that as a result of this disruption to his sleep and  
19 ensuing interaction, the “plaintiff became frightened, upset,  
20 nervous and humiliated, and suffered extreme and severe mental  
21 suffering and duress.” 20 Cal.App.3d at 311. The court found  
22 that this was enough for the claim to survive summary judgment.  
23 Id.

24 Graves, Sr. alleges that he experienced fright, grief,  
25 shame, and disappointment as a result of witnessing the attack on  
26 his son. Corey alleges that she suffered grief and insomnia

1 caused by witnessing the incident. Although neither plaintiff  
2 alleges that these emotions were particularly "enduring," a  
3 reasonable jury could conclude that they were "substantial." As  
4 a result, the court finds that plaintiffs have alleged enough  
5 facts to meet their summary judgment burden on this issue.

6 Therefore, viewing the facts in the light most favorable to  
7 the plaintiffs, the court holds that plaintiffs' IIED claim does  
8 not fail as a matter of law. Defendants' motion for summary  
9 judgment on the IIED claim is DENIED.

10 E. Negligent Infliction of Emotional Distress

11 A claim for negligent infliction of emotional distress  
12 ("NIED") requires plaintiffs to prove that they: (1) are closely  
13 related to the victim; (2) were present at the scene of the  
14 injury-producing event at the time it occurred and knew that the  
15 victim was being injured; and (3) suffered emotional distress  
16 beyond what a disinterested witness would likely suffer. Thing,  
17 48 Cal.3d at 647.

18 As Graves' father and sister, Graves Sr. and Corey are  
19 closely related to Graves. Id. at 668 n.10. Furthermore, it is  
20 undisputed that they witnessed Graves' injuries firsthand.  
21 Therefore, the only issue regarding their ability to recover on  
22 their NIED claim is whether they suffered more emotional distress  
23 than a disinterested witness would likely have suffered.

24 The California Supreme Court has characterized such distress  
25 as "serious mental distress." Molien v. Kaiser Found. Hosps., 27  
26 Cal.3d 916, 927-28 (1980). "Serious mental distress may be found

1 where a reasonable man, normally constituted, would be unable to  
2 adequately cope with the mental stress engendered by the  
3 circumstances of the case." Id. at 929-30. "Severe mental  
4 distress" appears to be a more exacting standard than "serious  
5 mental distress." See Cal. Jury Instructions - Civil §§ 12.73,  
6 12.80, 12.83 (2005). Therefore, for the reasons stated above,  
7 the court holds that a reasonable jury could find that plaintiffs  
8 suffered serious mental distress. Defendants' summary judgment  
9 motion is DENIED on the NIED claim.

10 F. Plaintiffs' Request for Summary Judgment

11 Plaintiffs did not file a cross-motion for summary judgment.  
12 However, in their opposition, plaintiffs request that the court  
13 find that defendants' conduct violated the Fourth Amendment as a  
14 matter of law. (Opp'n at 27 (citing Cool Fuel, Inc. v. Connett,  
15 685 F.2d 309, 311 (9th Cir. 1982).) A court can grant summary  
16 judgment to the non-moving party if it finds that there is no  
17 genuine dispute of material fact and that an issue can be  
18 resolved as a matter of law. Cool Fuel, 685 F.2d at 311. The  
19 court declines to grant summary judgment to plaintiffs sua sponte  
20 given that the facts are in such dispute.

21 III.

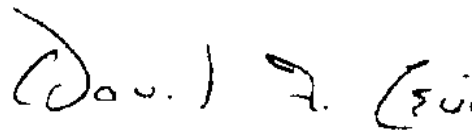
22 The Ninth Circuit has admonished district courts to grant  
23 summary judgment for defendants in police misconduct cases  
24 "sparingly." Santos, 287 F.3d at 853. "This is because police  
25 misconduct cases almost always turn on a jury's credibility  
26 determinations." Id. This case appears to be a typical police



1 misconduct case, with each party presenting very different  
2 versions of the facts. In light of this warning and based on the  
3 above analysis, the court GRANTS defendants' motion for summary  
4 judgment on Graves' § 1983 claim against defendant the City;  
5 DENIES defendants' summary judgment motion on all other claims;  
6 and DENIES plaintiffs' request to find a constitutional violation  
7 as a matter of law.

8 IT IS SO ORDERED.

9 Dated: 3/24/2006  
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A handwritten signature in black ink, appearing to read "David F. Levi". The signature is written in a cursive, somewhat stylized font. It is positioned above a horizontal line that serves as a separator from the printed name below.

13 DAVID F. LEVI  
14 United States District Judge  
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